

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, Maryland 21244-1850



## Center for Medicaid and State Operations

December 28, 2009

SHO #:09-016

CHIPRA #: 11

### **RE: Citizenship Documentation Requirement**

Dear State Health Official:

This letter is one of a series that provides guidance on the implementation of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Pub. L. 111-3. Specifically, this letter addresses the provisions of section 211 regarding the citizenship documentation requirement for Medicaid and the Children's Health Insurance Program (CHIP). The Deficit Reduction Act of 2005 (DRA), Pub. L. 109-171, amended sections 1902 and 1903 of the Social Security Act (the Act), to require Medicaid applicants who declare to be a U.S. citizen or national to present satisfactory documentary evidence of citizenship prior to enrollment in Medicaid. Section 211 of CHIPRA revises several of these requirements, and, effective January 1, 2010, applies these requirements to CHIP and permits States to verify citizenship for individuals newly enrolled using a data file match with the Social Security Administration (SSA). This letter provides an overview and guidance on the changes made by section 211 of CHIPRA.

#### **Background**

Prior to enactment of the DRA, Medicaid applicants could attest under penalty of perjury that they were U.S. citizens or nationals. States could require documentary evidence of citizenship or nationality but were not required to do so. Effective July 1, 2006, the DRA created a new section 1903(x) of the Act which requires States to obtain satisfactory documentary evidence of citizenship or nationality when enrolling individuals in Medicaid or at the first point of eligibility redetermination. Certain populations, including most individuals receiving Medicare, disability insurance benefits, supplemental security income benefits, children in foster care, and children receiving foster care or adoption assistance are exempt from these requirements. Federal implementing regulations at 42 CFR 435.406 and 435.407 outline the groups of individuals that are subject to citizenship documentation requirement and describes the criteria for documents that can be provided to confirm citizenship.

### **CHIPRA Changes Related to Documentation of Citizenship in Medicaid and CHIP**

Section 211 of CHIPRA includes several provisions modifying the Medicaid requirement for documentation of citizenship, including a new option to assist States in meeting this requirement:

- Eligible individuals who declare to be U.S. citizens or nationals must be provided a reasonable opportunity to present satisfactory documentation of citizenship or nationality and must be enrolled in coverage pending the reasonable opportunity to document that claim;
- Tribal enrollment or membership documents issued from a federally recognized Tribe must be accepted as verification of citizenship; no additional identity documents are required.
- Children who are initially eligible for Medicaid or CHIP as “deemed newborns” are considered to have provided satisfactory documentation of citizenship and may not be required to submit further documentation at subsequent eligibility determinations or re-determinations;
- A new State option, available beginning January 1, 2010, allows verification of a declaration of citizenship for individuals newly enrolled in CHIP or Medicaid using a data match with SSA to confirm the consistency of a declaration of citizenship with SSA records, in lieu of the presentation of citizenship documentation; and
- The citizenship verification requirements described above will apply to CHIP beginning January 1, 2010.

Additional policy and regulatory guidance will be forthcoming on this issue and the Centers for Medicare & Medicaid Services (CMS) will continue to work with States to help them implement these provisions in a manner that is consistent with the statute.

### **Reasonable Opportunity to Present Satisfactory Documentary Proof of Citizenship**

CHIPRA amends section 1903(x) of the Act requiring States to provide an individual who declares U.S. citizenship or nationality, under penalty of perjury, with at least the same reasonable opportunity to present evidence, as specified in sections 1137(d)(4)(A)(i) and (ii) of the Act, as individuals who are required to submit evidence indicating a satisfactory immigration status. States have flexibility to define what constitutes a reasonable opportunity period, but may not apply a standard to citizens and nationals that is more restrictive than such standard applied to immigrants.

Under this new provision, the State must allow an individual to declare citizenship and must not deny, delay, reduce, or terminate Medicaid or CHIP eligibility while the documentation is gathered during a reasonable opportunity period. Once an individual has declared that he or she is a U.S. citizen or national and has provided all other information that the State needs to

determine eligibility, the State must make a decision on whether the applicant is eligible. If the State determines that the individual is otherwise eligible, it must provide benefits while the individual secures the documents needed to satisfy the citizenship documentation requirement. The reasonable opportunity period does not affect the applicability of the timeliness standards at 42 CFR 435.911.

If an individual has not provided satisfactory documentation of citizenship by the end of the reasonable opportunity period, and any extension period, States may terminate that individual's eligibility for Medicaid or CHIP benefits in accordance with Medicaid rules at 42 CFR 919 and 435 Subpart E (regarding timely notice and opportunity for a fair hearing). Federal financial participation (FFP) will be provided for claims that occur during the reasonable opportunity period, even if eligibility is ultimately terminated due to lack of documentation.

This provision took effect on July 1, 2006, as if included in the DRA. (See Page 7 for further discussion.)

### **Acceptance of Tribal Documents for Proof of Citizenship**

Section 211 of CHIPRA also clarified certain provisions of the DRA related to acceptance of documents issued by a federally recognized Indian Tribe for documentation of citizenship or nationality. Section 1903(x)(3)(B) of the Act, as amended by CHIPRA, specifies that a document issued by a federally recognized Indian Tribe evidencing membership, enrollment in, or affiliation with such Tribe is satisfactory documentary evidence of an individual's U.S. citizenship or nationality. The document must identify the Federally recognized Indian Tribe which issued it, identify the individual by name, and confirm the individual's membership, enrollment in, or affiliation with that Tribe. Some examples include Tribal enrollment/membership cards, a certificate of degree of Indian blood issued by the Bureau of Indian Affairs, a Tribal census document, or a document issued by a Tribe indicating an individual's affiliation with the Tribe. These documents are examples of documents that may be used, but do not constitute an all-inclusive list of such documents. Tribal documents are now considered to be as reliable as a passport and are treated as "Tier 1" documents under Federal regulations at 42 CFR 435.407. Additional identity documentation is not required to be presented.

CMS will update current federal regulations authorizing the presentation of other forms of documentation, including Tribal documentation that may be used to satisfy the citizenship documentation requirements. During the period that begins on July 1, 2006, and ends on the effective date of the final regulations (forthcoming), an individual who is a member of a federally recognized Indian Tribe who presents a Tribal document as described above is deemed to have presented satisfactory evidence of citizenship.

It is important for States to recognize that Tribes are individual independent governments that may not have uniform methods of documenting membership, enrollment, or affiliation with a particular Tribe. CMS encourages States to contact Tribes located in their States for assistance in identifying documents used by those Tribes. CMS will provide technical assistance to States and Tribes to assist in the implementation of this provision.

With respect to federally-recognized Indian Tribes located within States having an international border and whose membership includes individuals who are not U.S. citizens, CHIPRA requires that the Secretary, after consultation with the Tribe, issue regulations regarding presentation of documentation sufficient to establish the citizenship of Tribal members who have declared they are citizens of the U.S.

The CMS has consulted with the Tribes concerning the implementation of this provision. Specifically, the Tribal Affairs Group and the Center for Medicaid and State Operations within CMS jointly hosted an All Tribes call on June 19, 2009 to consult on this and other provisions in CHIPRA. Two face-to-face consultation meetings were held in Denver on July 8, 2009, and July 10, 2009, to solicit advice and input from federally-recognized Tribes, Indian health providers, and Urban Indian Organizations on these provisions. In addition, CMS obtained the advice and input regarding implementation of section 211 from the CMS Tribal Technical Advisory Group at its July 30-31, 2009 meeting and no alternative types of Tribal documents were identified beyond the Tribal documents mentioned above.

These provisions took effect on July 1, 2006, as if included in the DRA. (See Page 7 for further discussion.)

### **Children Born in the U.S. to Mothers Eligible for Medicaid or CHIP**

Section 1903(x) of the Act was also amended to provide that individuals who are initially eligible for Medicaid or CHIP as “deemed newborns” are considered to have provided satisfactory documentation of citizenship and identity (by virtue of being born in the United States) and will not be required to further document citizenship or nationality at any subsequent Medicaid or CHIP eligibility determination or redetermination. Previously, under regulations promulgated pursuant to the DRA, documentation of citizenship was required at the first redetermination of Medicaid eligibility after the deemed newborn eligibility period ends, when the child turns 1 year old. CHIPRA repeals this regulatory requirement. CMS provided general guidance on the eligibility of deemed newborns in its August 31, 2009, letter to State Health Officials (SHO 09-009), available at <http://www.cms.hhs.gov/smdl/downloads/SHO083109b.pdf>.

This provision took effect for Medicaid on July 1, 2006, as if included in the DRA. (See page 7 for further discussion.)

**New State Option in Lieu of Requiring Documentary Evidence of Citizenship or Nationality**

Effective January 1, 2010, section 211 of CHIPRA amends section 1902(a)(46) of the Act by adding subparagraph (B) that provides a new optional State process at section 1902(ee) for documenting the citizenship or nationality for those Medicaid or CHIP applicants declaring to be U.S. citizens or nationals. This process may be used in lieu of requiring the applicant to present satisfactory documentary evidence of citizenship or nationality as specified in 42 CFR section 435.407. States that do not elect this option must continue to document citizenship and nationality in accordance with Federal regulations at 42 CFR sections 435.406 and 407 and policy requirements included elsewhere in this letter.

In accordance with a new section 1902(ee) of the Act, a State may submit to SSA the applicant's name, Social Security Number (SSN), and date of birth (DOB) for comparison with information that SSA has on record for the individual. SSA will compare an individual's name, SSN, and citizenship declaration provided by the State with data in its Master File of SSN Holders (Numident). States are expected to move forward with enrolling individuals during this verification period and eligibility may not be delayed, denied, or terminated pending the completion of the data matching process.

***SSA Operational Implementation of the New Option***

To support this exchange of information, SSA will use the existing electronic batch data exchange, known as the State Verification and Exchange System (SVES), currently in use for all States with SSA. SVES operates via a network known as the File Transfer Management System. States currently send requests for SSN verification to SSA on a daily basis, and SSA's responses are sent to States the next day (referred to as an "overnight batch").

If a State elects the CHIPRA option for an SSA file match, the authority for entering into this data exchange will be documented by a revised Computer Matching and Privacy Protection Act (CMPPA) agreement and Information Exchange agreement that States will need to sign with SSA no later than December 31, 2009, if they wish to use this option beginning January 1, 2010. States that are currently operating separate CHIP eligibility programs will need to implement a process to connect to the State Medicaid agency to enable the processing of verification of citizenship for new applicants through SVES for CHIP. As explained below, States may receive enhanced Federal matching payments for the design, development and installation of systems necessary to implement this electronic data matching option.

In collaboration with CMS, SSA has been working closely with the States by incorporating CHIP into the CMPPA model agreements and has provided test cases for use by the States. CMS and SSA will continue to work closely with the States to ensure a smooth transition to this new system.

### ***Operation of the Data Exchange***

For the citizenship verification inquiry, States will submit an SVES request that contains a special indicator of “Medicaid/CHIP” in the input field. This request will provide the States with SSA’s standard response as well as a specific response with respect to whether SSA can confirm the individual’s attestation of U.S. citizenship or nationality. SSA will match each individual’s information provided by the State with SSA’s records. SSA will provide a response to every query submitted by the State. Responses will indicate a confirmation of the data submitted by the State is consistent with SSA records, a response that indicates an inconsistency with SSA records, or a response that indicates that there is no match with SSA records. The State will receive a reply for each record that SSA is unable to process due to missing or invalid data.

A response from SSA that confirms that the data submitted by the State is consistent with SSA data, including citizenship or nationality, meets the citizenship verification requirements. No further action is required for the State or individual and no additional documentation of either citizenship or identity is required.

### ***Resolution of Data Inconsistencies and Continued Enrollment***

An inconsistency between the data submitted by the States and SSA’s data means that the State’s submitted information (individual’s name, SSN, DOB, or citizenship declaration) is not a match with the information in SSA’s Numident files. In these instances, SSA does not provide the State a confirmation that citizenship is substantiated. The State must correct its information and resubmit the request in order to obtain citizenship substantiation for the individual.

If the State receives notice from SSA that the individual’s name, SSN, DOB, or declaration of citizenship or nationality is inconsistent with information in SSA’s records, or if no match is found by SSA, the State must first make a reasonable effort to identify and resolve the cause of this result (e.g., a typographical or other clerical error) that may have originated with the State and can be resolved by research of the State’s records. If an error is identified, the State must correct its information and resubmit the request in order to confirm the citizenship verification for the individual. If the inconsistency is not resolved by such efforts, the State shall notify the individual and provide the individual with 90 days from the date that the notice is received either to provide satisfactory documentation of citizenship or nationality to the State as described at 42 CFR 435.406 and 435.407, or to resolve the inconsistency with SSA’s information if the issue causing the discrepancy is related to the SSN, name, or date of birth. The individual remains enrolled in Medicaid or CHIP during this effort.

After 90 days, if the inconsistency has not been resolved or documentary evidence of citizenship or nationality has not been provided, the State must disenroll the individual with timely and adequate notice within 30 days. The individual may appeal the disenrollment and request a fair hearing in accordance with standard notice and fair hearing procedures.

### ***Reporting Requirements***

A State electing this SSN matching option must report to CMS the percentage of inconsistent submissions as compared to total submissions to SSA each month. For the purpose of this reporting, a submission is counted as inconsistent if the State could not resolve the inconsistency with SSA's records, the individual did not successfully resolve the inconsistency or provide satisfactory documentation of citizenship status after a reasonable opportunity, and CHIP or Medicaid paid for an item or service received by the individual. CMS will issue additional guidance specifying the timeframe and format for this information.

As required by the statute, if for any Federal fiscal year (FFY), the State's average monthly rate of inconsistencies exceeds 3 percent, the State must develop and adopt a corrective action plan to review its procedures for verifying the identities of Medicaid and CHIP applicants, and must identify and implement changes in its procedures to improve the accuracy. Also, the State must reimburse CMS a certain amount of Medicaid or CHIP payments for the FFY for individuals who provided inconsistent information, based on the number of individuals with inconsistent information in excess of 3 percent as a percentage of the total number of individuals with inconsistent information. The Secretary of Health and Human Services (HHS) may waive, in certain limited cases, all or part of the payment if the State is unable to reach the allowable 3 percent of inconsistencies despite a good faith effort. CMS will issue separate guidance on the criteria for such waivers.

### ***Enhanced FFP for File Match System with SSA***

A State may claim FFP for 90 percent of the sums expended during a calendar quarter that are attributable to the design, development, or installation of a mechanized verification and information retrieval system that the Secretary of HHS determines is necessary to implement this option for a file match with SSA. The 90 percent match will also be available for implementing a connection with a separate CHIP eligibility program to enable application of this process to CHIP. The CHIP administrative expenditures cap does not apply to expenditures necessary for the State to implement this provision. In addition, a State may claim FFP for 75 percent of the sums expended during a calendar quarter that are attributable to operation of these systems.

### **Application of Citizenship Documentation Requirements to CHIP**

Effective January 1, 2010, section 2105(c) of the Act is amended to apply to separate CHIP programs the requirement to provide verification of citizenship or nationality as a condition of enrollment. (The requirement currently applies to CHIP-funded Medicaid expansion programs, so this provision aligns the requirements for both programs.)

Separate CHIP programs are given the option to verify citizenship of new CHIP applicants using a file match with SSA in lieu of obtaining documentary evidence of citizenship or nationality. However, as stated above, SSA will not establish separate connections to separate CHIP programs. Those programs must establish a connection through the State’s current Medicaid SVES data exchange.

### **Restoration of Medicaid Eligibility**

As noted above, the effective date of the CHIPRA provisions related to reasonable opportunity, Tribal documentation, and citizenship of deemed newborns is July 1, 2006, the effective date of the DRA. This retroactive effective date means that an individual previously determined ineligible for Medicaid, including under a section 1115 waiver program, during the period of July 1, 2006, through October 1, 2009, must be granted eligibility 1) if the individual was determined ineligible solely due to the requirements for documentation of citizenship or nationality in effect at the time the ineligibility determination was made; and 2) the individual would be eligible by applying the provisions of section 1903(x) that were amended by section 211(b) of CHIPRA (i.e., Tribal documents, reasonable opportunity period, citizenship of deemed newborns). In such case, the State must grant or restore the eligibility effective with the date the individual would have been eligible were these CHIPRA provisions in effect at the time of the determination of ineligibility.

In addition, CHIPRA provides States with the option to “deem” individuals to be eligible retroactively to the date the individual would have been eligible if the States can identify individuals meeting criteria (1) and (2) discussed above. Under this deeming option, the State would not need to perform a new eligibility determination, but rather, would be able to “deem” the individual as retroactively eligible and restore eligibility accordingly. CMS will work with States interested in pursuing this option.

### **Contact Information**

If you have questions regarding this guidance, please send an email to [CMSOCHIPRAQuestions@cms.hhs.gov](mailto:CMSOCHIPRAQuestions@cms.hhs.gov) or contact Ms. Victoria Wachino, Director, Family and Children’s Health Programs Group, who may be reached at (410) 786-5647.

Sincerely,

/s/

Cindy Mann  
Director

cc:

CMS Regional Administrators

CMS Associate Regional Administrators  
Division of Medicaid and Children's Health

Ann C. Kohler  
NASMD Executive Director  
American Public Human Services Association

Joy Wilson  
Director, Health Committee  
National Conference of State Legislatures

Matt Salo  
Director of Health Legislation  
National Governors Association

Debra Miller  
Director for Health Policy  
Council of State Governments

Christine Evans, M.P.H.  
Director, Government Relations  
Association of State and Territorial Health Officials

Alan R. Weil, J.D., M.P.P.  
Executive Director  
National Academy for State Health Policy